

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Eastern Illini Electric :
Cooperative : 89-0259
-vs- :
Central Illinois Light Company :
Complaint under the Electric :
Supplier Act regarding service :
in Champaign County, Illinois. :

ORDER

By the Commission:

I. PROCEDURAL HISTORY

On July 19, 1989, Eastern Illini Electric Cooperative ("EIEC") filed with the Illinois Commerce Commission ("Commission") a Complaint, under the Electric Supplier Act ("Act") versus Central Illinois Light Company ("CILCO"). On October 23, 1989, CILCO filed its Answer to the Complaint and its Affirmative Defense.

Pursuant to due notice, hearings were held before a duly authorized Hearing Examiner of the Commission at its offices in Springfield, Illinois, on various dates in 1989 through 1992. Appearances were entered by respective counsel for CILCO and EIEC, and a representative of the Engineering Section of the Commission's Public Utilities Division. Evidence was presented and at the conclusion of the hearings, the record was marked "Heard and Taken." Briefs and/or reply briefs, supplemental briefs, supplemental reply briefs, and recommended orders were filed by EIEC and CILCO. The Hearing Examiner's proposed order was served on the parties. Exceptions were filed by CILCO and EIEC. Replies thereto were filed by EIEC.

II. RELIEF SOUGHT

In its Complaint, EIEC requests that the Commission "find that EIEC has [the] exclusive right to provide electric service to the residents hereafter occupying Wiltshire Estates Fifth Subdivision ["Subdivision"] and enter an order accordingly and further ordering CILCO to disconnect its customers and remove its facilities from said subdivision."

In its Answer, CILCO requests that the Commission, after hearing, find that CILCO has exclusive rights to provide electric service to the Subdivision and that it enter an Order accordingly. In its Affirmative Defense, CILCO requests, pursuant to Section 8 of the Act, that the Commission, after

hearing, find that CILCO has the exclusive right to provide electric service to the residents of the Subdivision.

The Wiltshire Estates Fifth Subdivision ("Subdivision") is located in the southwest quarter of Section 13, Township 19 North, Range 10 East of the Third Principal Meridian, Champaign County, Illinois.

III. APPLICABLE STATUTE: SECTION 8

No service area agreement exists for the area comprising the Subdivision. The parties agree that the instant proceeding should be decided pursuant to Section 8 of the Electric Supplier Act. EIEC states, "The case presents issues under Section 8 of the Electric Supplier Act since neither electric supplier was serving the property in which the subdivision is located prior to the adoption of the Electric Supplier Act on July 2, 1965." (EIEC Br., p. 2) Section 8 of the Act, 220 ILCS 30/8, provides, in part, as follows:

SECTION 8. HEARING AND DETERMINATION AS TO WHICH OF SUPPLIERS SHOULD FURNISH PROPOSED SERVICE. When a complaint has been filed as provided in Section 7, the Commission shall proceed, after reasonable notice to the suppliers concerned, to a hearing to determine which of the suppliers is entitled or should be permitted under this Act to furnish the proposed service...

In making this determination, the Commission shall act in the public interest and shall give substantial weight to the consideration as to which supplier had existing lines in proximity to the premises proposed to be served, provided such lines are adequate. In addition, the Commission may consider, but with lesser weight, (a) the customer's preference as to which supplier should furnish the proposed service, (b) which supplier was first furnishing service in the area; (c) the extent to which each supplier assisted in creating demand for the proposed service, and (d) which supplier can furnish the proposed service with the smaller amount of additional investment....

After making its determination, the Commission shall make findings of fact and render its decision as to which supplier is entitled or should be permitted to furnish the proposed service. The decision of the Commission constitutes an authorization to that supplier to render such service and revokes any temporary authorization granted by the Commission while the dispute was pending.

IV. SUMMARY OF PARTIES' POSITIONS; EXCEPTIONS

Based on the arguments in its briefs, EIEC summarizes its position in this case as follows:

EIEC seeks a Commission order finding that EIEC is the proper electric supplier for providing electric service to the subdivision for the reason that its 1965 line is closer to all points of the subdivision than is the CILCO 1965 line. Further, EIEC maintains it was first in providing electric service in the area and has provided a greater amount of assistance to create the demand for the electrical service in the area. EIEC further maintained that it will be required to expend the least amount of investment to provide electric service to the subdivision. EIEC further maintains that even though the customer prefers CILCO's service, that preference is based solely on rates which is not a legal basis for determining territory lines. Further, the Commission must give substantial weight to the fact that EIEC's 1965 line is closer to the subdivision than is CILCO's 1965 line and that all but one of the other factors to be considered by the Commission are in favor of service by EIEC. EIEC further maintains that the rate differential between EIEC and CILCO is not a factor that can be considered by the Commission in determining this dispute and even if it is that it must be given little if any significance. Even if the Commission were to consider such factor it would not outweigh the other factors which point to service by EIEC.

(EIEC Rec. Order, pp. 6-7).

Based on the arguments in its briefs, CILCO summarizes its position in this case as follows:

CILCO argues that the Commission should determine Proximity by looking at each party's Proposed Route. As such, CILCO maintains that it has Existing lines in Proximity to Lot 61 of the Subdivision, which is where the first home built in the Subdivision is located. CILCO maintains that Lot 61 provided the only known Normal service connection point for the Subdivision during this proceeding. While EIEC stipulated in this proceeding that the issue of customer preference should be found... in favor of CILCO, CILCO believes that the magnitude of that customer preference should be considered by the Commission in resolving this dispute. CILCO maintains that it was first furnishing Service in the area by virtue of its predecessor,

Commonwealth Edison, providing Service to the town of St. Joseph, Illinois and by providing Service to the first home constructed in the vicinity of the Subdivision. CILCO believes that it alone assisted in creating the demand for the proposed Service through its economic development activities and its low and stable rates. CILCO believes that using cable in conduit to serve the Subdivision will result in a lower cost, better service, installation for the life of the Subdivision and that, accordingly, CILCO can furnish the proposed Service to the Subdivision with the smaller amount of additional investment.

(CILCO Rev. Rec. Order, pp. 12-13)

The Hearing Examiner's proposed order found that EIEC should be entitled to serve the Subdivision. In its exceptions to the proposed order, CILCO concludes on pages 4 and 5 that the proposed order should be changed to provide that:

1. The mandatory public interest factor is found in favor of CILCO;
2. The mandatory Proximity factor, while found in EIEC's favor, is not a determining criteria where both Electric Suppliers are in Proximity to parts of the Subdivision and where CILCO had a Line that was located approximately one foot to the west of the Subdivision at the time this dispute arose. The public policy declared in Section 2 of the Act, that being to avoid duplication of facilities, has not been offended in this dispute;
3. The two lesser weight criteria found in CILCO's favor, customer preference and greater assistance in creating the demand for the proposed service, should be given increased weight due to the significant evidence in support thereof, primarily based upon the rate differential between EIEC and CILCO; and
4. CILCO should be entitled to be the exclusive Electric Supplier for the premises in question.

On the "public interest factor", CILCO states, in part, "The public that will be primarily affected by the decision in this proceeding are Cecil Busboom and the purchasers of the ten lots which comprise the Subdivision." (CILCO Exc., p. 2)

In its exceptions, EIEC agrees with the ultimate determination made in the proposed order. However, EIEC does

take exception with certain findings in the proposed order regarding "which... supplier was first furnishing service in the area"; "which supplier can provide the service with the least amount of additional investment"; and the relevance of evidence of rate differential. (EIEC Exc., pp. 1-5)

Neither EIEC's nor CILCO's exceptions incorporate suggested replacement language within the meaning of Section 200.830 b) of the Commission's Rules of Practice.

V. PROXIMITY: THE MANDATORY SUBSTANTIAL WEIGHT FACTOR

A. Definition of Terms

As indicated above, Section 8 provides, in part, that the Commission shall give "substantial weight" to the consideration as to which supplier had "existing lines" in proximity to the "premises" proposed to be served, provided such lines are adequate. Section 3.13 of the Act defines "Proximity" as follows:

"Proximity" means that distance which is shortest between a proposed normal service connection point and a point on an electric supplier's line, which is determined in accordance with accepted engineering practices by the shortest direct route between such points which is practicable to provide the proposed service.

Section 3.6 defines "Existing Line" as follows:

"Existing line" means any line of an electric supplier which on the effective date of this Act is (a) in existence or (b) is under construction, as determined in accordance with accepted engineering practices. The term includes any such line which one electric supplier may acquire from another electric supplier after such effective date.

Section 3.12 defines "Premises" as follows:

"Premises" means a physical area (a) which, except for any intervening public or private rights of way or easements, constitutes a single parcel or unit and (b) which a single customer owns, uses or in which it has some other interest in connection with receiving service at one or more points of delivery.

The definition of Proximity in Section 3.13 refers to "normal service connection point." Section 3.10 defines that term, in part, as follows:

"Normal service connection point" means that point on a customer's premises where an electric connection to serve such premise would be made in accordance with accepted engineering practices....

B. Wiltshire Estates Fifth Subdivision: Lot 61

Wiltshire Estates Fifth Subdivision ("Subdivision") is located in the southwest quarter of Section 13, Township 19 North, Range 10 East of the Third Principal Meridian in Champaign County, Illinois. The Subdivision is located east of and within a 1.5 mile radius of St. Joseph, Illinois. (CILCO Ex. A, p. 3; CILCO Br., p. 3). The developer of the Subdivision is Cecil Busboom. The Subdivision is part of a twenty acre parcel of land that was acquired by Busboom in 1972. (Id.) CILCO states that prior to the development of the Subdivision, neither CILCO nor EIEC ever provided electric service to the Premises of which the Subdivision is a part. (CILCO Br., p. 3, citing Tr. p. 350-351)

Cecil Busboom, as the developer of the Subdivision, contacted CILCO regarding obtaining service to the Subdivision during the spring and early summer of 1989. (CILCO Ex. A, p. 3; CILCO Exhibit 4) CILCO approved a Contract for Electric Service Extension with Busboom for electric service to the Subdivision on July 10, 1989. (CILCO Ex. 1, p. 4; CILCO Ex. 4) The Subdivision contains 10 lots. The western-most lot is identified as Lot 61. Lot 70 is the eastern-most lot.

Charles W. Rohl ("Rohl") built a home on Lot 61 on the west end of the Subdivision ("Lot 61") in 1989. (CILCO Ex. E, p. 1-2) Rohl's house was the first home constructed in the Subdivision. (Id., p. 2) Rohl's electric meter is located at the rear of his house. (Tr. 361, 392; CILCO Exhibit 11). Rohl receives electric service from CILCO.

C. "Existing Lines"

CILCO and EIEC presented evidence relating to the proximity of their lines, as of the effective date of the Act, July 2, 1965, to the premises to be served. As of July 2, 1965, CILCO owned and maintained a 12.5kv distribution line located along the west borderline of Section 13 ("CILCO Existing line" or "1965 line"). (CILCO Ex. B, p. 3; CILCO Exhibit 10a). As of July 2, 1965, Eastern Illini Electric Cooperative had an electric distribution line located near the northeast corner of the Subdivision ("EIEC Existing line" or "1965 line"). (EIEC Ex. A, p. 6; CILCO Exhibit 12; CILCO Br., p. 3) That is, as explained by EIEC, "the only lines in existence on July 2, 1965 in

relationship with the Subdivision in question was the single phase line of EIEC in the Northeast corner of the Subdivision in question and CILCO's three phase line built in 1957 located approximately one-quarter of a mile west of the west line of the Subdivision in question." (EIEC Br., p. 5)

D. Proximity to Lot 61

1. Introduction

The parties to this proceeding have identified three different ways to measure the Proximity of their Existing lines to the known normal service connection point for Lot 61 of the Subdivision. CILCO identifies those three methods as the "Straight Routes," the "Peters Drive Routes," and the "Proposed Routes." (CILCO Supp. Br., p. 4) The parties now agree that the "straight routes" would not be practical and should not be used in determining proximity. (CILCO Supp. Br., pp. 3-4; EIEC Supp. Br., p. 10) CILCO and EIEC are in disagreement over whether the EIEC's Peters Drive route or its "Proposed" routes should be used to calculate proximity.

CILCO believes that proximity should be calculated based on the "Proposed Routes" which would actually be used by the supplier to provide service. CILCO proposes to provide Service to the Subdivision by connecting to a Line which is located near the southwest corner of Lot 61 of the Subdivision ("CILCO Proposed Route"). (CILCO Supp. Br., p. 2; CILCO Exhibit 13) EIEC plans to provide Service to the Subdivision by connecting to a Line which is located near the southeast corner of Lot 70 of the Subdivision ("EIEC Proposed Route"). (Id.; EIEC Exhibit II, Tr. p. 201) This EIEC route extends along the south side of the Subdivision.

According to CILCO, the distance from CILCO's Existing line to the known normal service connection point on the house built on Lot 61 of the Subdivision, measured along the CILCO Proposed Route, is 1,416.5 feet, while the distance from EIEC's Existing line to the known normal service connection point on the house built on Lot 61 of the Subdivision, measured along the EIEC Proposed Route, is 1,493 feet. (CILCO Supp. Br., p. 2; CILCO Exhibit 11)

The third route identified by EIEC for purposes of measuring proximity is the Peters Drive route. EIEC explains, "This is the route coming from the 1963 existing line along the south side of Peters Drive, which is the north side of the subdivision, to a point directly north of the house on Lot 61." (EIEC Supp. Br., p. 11) The total distance, when calculated in that fashion, is

1285 feet along the south side of Peters Drive and then 84.51 feet due south to the meter on the house for a total of 1349.51 feet. (Id.) EIEC compares this distance to the length of "the route chosen by CILCO [of]... 1436.5 feet." (Id.) CILCO does not agree that EIEC's proximity to Lot 61 should be calculated using the Peters Drive Route.

2. CILCO Position

CILCO contends that determining the proximity of EIEC's "existing" Line, as of July 2, 1965, to the normal service connection point on Lot 61, should be based on the route actually proposed to be used by EIEC rather than the Peters Drive route. CILCO argues, in part:

Neither CILCO nor EIEC have ever proposed to actually provide Service to the Subdivision via the... Peters Drive Route... For various cost, maintenance, and aesthetic reasons, CILCO and EIEC have both chosen their preferred routes to provide Service to the Subdivision. It should be those route choices, which each of the parties have made, which determine their Proximity to Lot 61 of the Subdivision. It must be assumed that in proposing a route to serve the Subdivision, both CILCO and EIEC determined their route in accordance with accepted engineering practices as the shortest direct route which is practicable to provide the proposed Service.

(CILCO Supp. Br., p. 5) On this point, CILCO continues:

Soon after the adoption of the Act, the Commission had an opportunity to consider the method for determining Proximity. In Menard Electric Cooperative v. Central Illinois Public Service Company, ESA 13, CIPS contended that it had a 69KV line which was 300 to 350 feet from the normal service connection point of the proposed service. The Commission recognized, however, in paragraphs 14 and 16 of its findings, that it would not be practicable to provide the required Service from the 69 KV line to the customers' point of delivery, and as such, that point could not be given any weight in the determination of Proximity. The Commission also recognized in that proceeding that CIPS was providing temporary service from a point on its Lines which was different than the point on the 69KV line which CIPS was pointing to for determining Proximity.

(Id.) CILCO asserts, "In this dispute, as in Menard Electric Cooperative v. Central Illinois Public Service Company, the Commission must distinguish between what is possible and what is

practicable." (Id., p. 6) CILCO argues that while it would be possible for either party to provide service to the Subdivision by the Peters Drive Routes, neither party chose that route for cost, maintenance, aesthetic or other reasons. (Id.) CILCO contends, "As in Menard Electric Cooperative, the Commission should now look to the route that each party has proposed as being the practicable route to provide Service for determining Proximity." (Id.)

In further support of its position that EIEC's Proposed Route should be used in determining proximity, CILCO argues:

Each of the parties have submitted evidence in this proceeding on their cost of furnishing the proposed Service to the Subdivision. Each party's costs are based upon providing the proposed Service along their Proposed Route. For the sake of consistency, the Commission must base its cost and Proximity findings upon a single route suggested by a party. Here, that route is each party's Proposed Route.

(CILCO Supp. Br., p. 6)

3. EIEC Argument

EIEC argues that if determining the "proximity" of the 1965 EIEC line to Lot 61, the Commission is required by statutory definition to consider the north route of EIEC even though it is not the proposed route of EIEC. (EIEC Supp. Br., pp. 12-13; EIEC Supp. R. Br., p. 7) EIEC believes CILCO's position that the definition of "proximity" requires the measurement to be made from the 1965 existing line of the electric supplier to the proposed customer by way of the route actually proposed to be used by the electric supplier is contrary to the definition of "proximity" as found in the ESA. (EIEC Supp. R. Br., p. 6) That definition reads as follows in Section 3.13:

"Proximity" means that distance which is shortest between proposed normal service connection point on an electric supplier's line, which is determined in accordance with accepted engineering practices by the shortest direct route between such points which is practicable to provide the proposed service.

According to EIEC, this statutory definition does not mention anything about the "proposed route" to be used by the electric supplier. EIEC argues, "Rather the distance is to be determined by the SHORTEST DIRECT ROUTE between the connection to the electric supplier's 1965 existing line and the normal service connection point on the customers property." (EIEC Supp. R. Br.,

pp. 6-7) EIEC adds, "Thus, the only three criteria that must be met after determining the two connection points is:

1. What is the shortest direct route between the two points.
2. What is practicable.
3. What route meets accepted engineering practices."

(Id., p. 7)

EIEC's north route, also known as the Peters Drive route, is 1349.51 feet in length. EIEC asserts, "The north route is a practical route that could be used by EIEC that meets all accepted engineering practices as admitted by CILCO." (EIEC Supp. R. Br., p. 7) On this point EIEC adds, "CILCO has admitted that both methods of providing service by EIEC, whether along the north side of the subdivision or along the south side, are practical and satisfy engineeringly acceptable standards for providing such service." (EIEC Supp. Br., p. 11) EIEC concludes, "When this route is compared to the CILCO route of 1436.5 feet measured from the CILCO 1965 existing line to the meter on the house on Lot 61, EIEC is even closer to the meter on Lot 61 than is CILCO." (EIEC Supp. R. Br., p. 8)

E. Proximity to Subdivision As a Unit

1. EIEC Position: IP Decision

On the issue of proximity, EIEC's basic position is that regardless of which supplier's "existing lines" are closer to Lot 61, the law of Illinois requires that the determination of proximity be made for the subdivision as a whole, not for individual lots within the subdivision. (EIEC Supp. Br., pp. 11-12; EIEC Supp. R. Br., p. 8; EIEC Br., pp. 17-18, 22-23)

In support of this position, EIEC cites Illinois Power Co. vs. Illinois Commerce Commission, 39 Ill 2d 406; 235 NE 1d 614, (1968). In that case, the Illinois Supreme Court was faced with the question of determining service rights between two electric suppliers to the Countryside Estates Subdivision which had been platted by its owners into 18 lots. The dispute arose between Monroe County Electric Cooperative, Inc. ("Monroe") and Illinois Power Co. ("IP"). The Commission found for Monroe and authorized Monroe to serve all 18 lots of the Subdivision. The dispute was decided by the Commission under Section 8 of the Act. On appeal to the Supreme Court, IP contended that the Commission erred in treating the entire subdivision as a unit, that some of the lots

were closer to IP's existing line than they were to Monroe's existing lines, and that the subdivision should have been divided between the two suppliers. In response to that argument, the Illinois Supreme Court stated on page 409:

"We cannot agree. The term 'premises' is defined in section 3.12 of the Act as a physical area which constitutes a single parcel or unit and "which a single customer owns, uses or in which it has some other interest in connection with receiving service at one or more points of delivery." (Ill. Rev. Stat. 1965, chap. 111 2/3, par. 403.12) The subdivision in question satisfies the definition, and the Act when read as a whole discloses no intent that in cases of a compact subdivision the determination of proximity to existing lines must nevertheless be made on a lot-by-lot basis.

The Court further stated on page 409:

A further contention is made that the subdivider was not shown to be a "customer" for electric service, as that term is used in the Act, and its preference for a supplier should therefore not have been considered by the Commission. As we have indicated, it sufficiently appears that the owner of the subdivision qualifies as a customer within the meaning of the Act, and the Commission properly referred to it as such.

According to ETEC, "The same analysis is binding upon the Commission in the instant case." (ETEC Br., p. 18) ETEC asserts:

Cecil Busboom executed a contract with CILCO for electric service to all ten lots in the Subdivision. He stated that he intended to treat all ten lots as one unit for purposes of electric service. Thus, the Subdivision meets the definition of "premises" found in the ESA and as interpreted by the Commission and the Illinois Supreme Court. Thus, in making the factual determination as to which suppliers' lines as they existed on July 2, 1965, are closer to the subdivision, the Subdivision must be treated as one unit. Consequently, the determination cannot be made on the basis of each individual lot, as proposed by CILCO.

(Id., p. 18)

ETEC alleges that in Wiltshire Estates Fifth Subdivision, each lot east of Lot 61, consisting of Lots 62 through 70, is closer to the 1965 ETEC existing line than to the 1965 CILCO

existing line. (EIEC Supp. R. Br., p. 8) That is, the only lot even arguably closer in proximity to the CILCO 1965 existing line is Lot 61. (Id., pp. 3-4) EIEC asserts that even if the Commission were to determine that CILCO's 1965 line is closer to the meter on Lot 61 than is the EIEC 1965 existing line, "CILCO's claim of proximity to all of the subdivision based upon Lot 61 pales by comparison to EIEC which without question has proximity as to nine of the ten lots." (Id.)

Regarding the location of the lots, Lot 61 is on the west end of the Subdivision. Lot 70 is on the east end. EIEC asserts that "[t]he distance from the 1965 EIEC line... to the Northeast corner of Lot 70 of the Subdivision is 3 feet (EIEC Ex 17 Tr 141)", while [t]he distance from the 1965 CILCO... line... to the Northeast corner of Lot 70 of the Subdivision measured along the north line of the Southwest Quarter of Section 13 is 2638.64 feet (Tr 174-175; EIEC Ex. 17, Tr 141)." (EIEC Br., pp. 5-6) From the west boundary of Lot 61, which is closer to CILCO's 1965 line than any other lot, CILCO's 1965 line is approximately a quarter of a mile to the west. (EIEC Br., p. 5) EIEC alleges that "the distance will be greater from... [CILCO's] 1965 line to... [Lots 62 through 70] and their respective meter locations than will EIEC's 1965 existing line." (EIEC R. Br., p. 6)

EIEC concludes that when looking at the Subdivision as a unit, the Commission must determine the question of proximity in favor of EIEC. (EIEC Supp. Br., p. 13; EIEC Supp. R. Br., p. 8)

2. CILCO Arguments

In its brief, CILCO maintains that Lot 61 provided the first and only known normal service connection point for the Subdivision during this proceeding. (CILCO Br., p. 18)

CILCO argues that proximity must be based on the "proposed routes," that the distances from CILCO's and EIEC's Existing lines to the known normal service connection point on the house built on Lot 61 of the Subdivision, measured along each party's Proposed Route, are 1,436.5 feet and 1,493 feet, respectively; and that as such, CILCO had Existing lines in Proximity to Lot 61. (CILCO Supp. Br., pp. 2, 6)

CILCO contends that by looking to the parties' Proposed Routes, CILCO has Existing Lines in Proximity to Lot 61. CILCO acknowledges that EIEC had an Existing line that would be in Proximity to all of the remaining lots of the Subdivision. (CILCO Rev. Rec. Order, p. 14) CILCO believes, however, that "[a]s indicated by the Illinois Supreme Court in Illinois Power Co. the Illinois Commerce Commission, 39 Ill. 2nd 406, 235 N.E.

2nd 614 (1968), there is no need for the Commission to divide the subdivision between Suppliers on the basis of Proximity." (CILCO Supp. Br., 6-7; CILCO Br., p. 12) CILCO asserts, "Rather, as CILCO is in Proximity to part of the Subdivision, and EIEC is in Proximity to other parts of the Subdivision, the Proximity factor simply becomes less of a determining criteria for resolving this dispute." (CILCO Supp. Br., p. 7)

F. Conclusions

Section 8 provides that in determining which supplier "is entitled or should be permitted under the Act to furnish the proposed service," the Commission "shall act in the public interest and shall give substantial weight to the consideration as to which supplier had existing lines in proximity to the premises proposed to be served, provided such lines are adequate."

The parties' positions on the proximity issue are summarized above. Section 8 provides in part that the Commission "shall" give "substantial weight" to the consideration as to which supplier had "existing lines" in "proximity" to the "premises" proposed to be served. Section 3.13 of the Act defines proximity as that distance which is shortest between a proposed normal service connection point and a point on an electric supplier's line, which is determined in accordance with accepted engineering practices by the shortest direct route between such points which is practicable to provide the proposed service. Statutory definitions of "existing lines", "premises" and "normal service connection point" are set out above. The location and adequacy of existing lines are not in dispute.

Based on the record in this proceeding and the decision in Illinois Power, 39 Ill. 2d 406, the Commission agrees with EIEC that in the instant case, the "premises" to be served constitutes the Subdivision as a whole. The Illinois Power case concerned a dispute between Illinois Power Company ("IP") and Monroe County Electric Cooperative, Inc. ("Monroe") over the right to provide service to the Countryside Estates Subdivision. The Commission found for Monroe and authorized Monroe to serve all 18 lots of the subdivision pursuant to Section 8 of the Electric Supplier Act. On appeal to the Supreme Court, IP contended that the Commission erred in treating the entire subdivision as a unit, that some of the lots were closer to IP's existing line than they were to Monroe's existing lines, and that the Subdivision should have been divided between the two suppliers. In response to that argument, the Illinois Supreme Court stated at page 409:

We cannot agree. The term 'premises' is defined in section 3.12 of the Act as a physical area which constitutes a single parcel or unit and "which a single customer owns, uses or in which it has some other interest in connection with receiving service at one or more points of delivery." (Ill. Rev. Stat. 1965, chap. 111 2/3, par. 403.12) The subdivision in question satisfies the definition, and the Act when read as a whole discloses no intent that in cases of a compact subdivision the determination of proximity to existing lines must nevertheless be made on a lot-by-lot basis.

The Commission agrees with EIEC that the same analysis is applicable in the instant case. Based on the facts presented, the Subdivision meets the definition of "premises" found in the Act as interpreted by the Commission and the Illinois Supreme Court. Thus, in making the factual determination as to which suppliers' lines as they existed on July 2, 1965, are closer to the Subdivision, the Subdivision must be treated as one unit. Consequently, the determination should not be made on the basis of Lot 61, as proposed by CILCO.

In the present proceeding, regardless of whose "existing" facilities as of July 2, 1965 were in closer proximity to Lot 61, the record is clear that at least nine of the ten lots in the subdivision are closer to EIEC's "existing lines" than to CILCO's "existing lines". Likewise, regardless of where the normal service connection point may be located on each of the individual lots, the record indicates that the distances between said points and the existing lines of the suppliers will, on the whole, be shorter for EIEC than for CILCO.

Based on the record presented, the Commission concludes that EIEC's "existing lines" are in considerably closer proximity to the premises proposed to be served within the meaning of Section 8 of the Electric Supplier Act, and that such lines are adequate.

VI. DISCRETIONARY, LESSER WEIGHT FACTORS; OTHER ISSUES

A. Discretionary, Lesser Weight Factors Under Section 8

1. Customer Preference

Section 8 provides that one of the factors which the Commission "may" consider, but with "lesser weight" than proximity, is "the customer's preference as to which supplier should furnish the proposed service."

CILCO and EIEC agree that the issue of customer preference should be found in favor of CILCO. (CILCO Br., p. 13; EIEC Br., p. 23; Tr. 67) The parties disagree over the weight to be afforded this factor.

Cecil Busboom, developer of the Subdivision, prefers that CILCO be the electric supplier for the Subdivision. He said the main reason is that EIEC's rates are higher. (CILCO Ex. D, pp. 4-5) Mr. Busboom testified that if CILCO is not allowed to be the Supplier for the Subdivision, that factor will have an adverse impact upon his ability to sell the remaining lots in the Subdivision. (CILCO Ex. D, p. 7) Busboom further testified that should EIEC be the Supplier for the Subdivision, that factor will adversely affect the value of the lots; whereas, if CILCO is the electric supplier for the Subdivision, that factor adds value to the Subdivision lots. (Id.)

Charles Rohl, the owner of the first home that was constructed in the Subdivision, on Lot 61, testified that he would prefer that CILCO be the Supplier for his home. (CILCO Ex. E, pp. 1, 3) Rohl stated that if he were to receive service from a supplier that had rates that were higher than CILCO's rates, that factor would be a detriment to the value of his home. (Id., p. 1)

On the question of rate differentials, CILCO alleges that there has been no dispute in this proceeding that CILCO's rates are much lower than the rates of EIEC. (CILCO Br., p. 21) On September 11, 1989, CILCO conducted a residential rate comparison of EIEC's general service Rate 10 and CILCO's residential Rate 1 at three levels of annual usage. (CILCO Exhibit 15) CILCO witness Turner testified that a customer's energy costs under CILCO's residential rates, for all three usage levels reviewed, were lower than the energy costs under EIEC's residential rates. (CILCO Ex. C, p. 2; CILCO Ex. 15) Ms. Turner stated that as a percentage, energy costs under CILCO's rates were calculated to be 52.8%, 56.7%, and 53.8% of the energy costs under EIEC's rates for a small customer, medium customer, and large customer, respectively. (Id., CILCO Br., p. 21)

CILCO also alleges that, based in part on forecasts identified in its first electric least cost plan, the company "projects that its rates will decrease in real terms over the 20 year planning period set forth in that plan." (CILCO Br., pp. 22-23, citing CILCO Ex. I, p. 4)

On the issue of customer preference, CILCO argues in part, as follows:

Busboom, Rohl and the other existing and future purchasers of lots in the Subdivision will all be made to suffer a direct financial detriment should EIEC be allowed to be the provider of Service to the Subdivision. As such, the Commission should weigh heavily customer preference in determining this dispute. The Commission has recognized the importance of customer preference in deciding disputes under Section 5 of the Act. Southeastern Illinois Electric Cooperative, Inc. v. Central Illinois Public Service Company, 89-0153.

(CILCO Br., pp. 14-15) CILCO believes the magnitude of the customer preference should be considered by the Commission in resolving this dispute.

In its reply brief, EIEC contends, "The Commission does not have authority to weigh heavily customer preference in determining which electric supplier provides service to the subdivision." (EIEC R. Br., p. 7). EIEC asserts:

CILCO urges the Commission to give great weight to customer preference in determining which of the two electric suppliers should provide service to the Subdivision. However, there simply is no statutory or case authority supporting that view of Section 8. Certainly, CILCO cites no authority to support that position and the literal reading of Section 8 refutes the legal basis for that contention. Since the Commission has no authority to do anything that it is not authorized by statute to do, a decision by the Commission giving great weight to the customer preference would result in an erroneous decision not supported by the law.

(Id., p. 7)

Regarding the reasons for Busbooms' preference for service from CILCO, EIEC asserts:

Busboom stated that his reason for preferring CILCO's electric service was simply because CILCO had lower rates. (Busboom Dir. Test. pp. 4-5; CILCO Ex. D). Yet, all of the testimony presented in this proceeding indicates that rates charged by an electric supplier vary over time.

(EIEC R. Br., p. 7) With respect to Mr. Busboom's testimony as to the marketability of lots in the Subdivision, EIEC states in part, "Busboom admitted on cross examination that purchasers of a lot consider other factors such as the school, the roads, sewers and water and that all of these factors affect the price of the

lots and the salability of the same. (Tr. 244-245, 256-257)." (Id., pp. 7-8)

In its reply brief, EIEC also contends that CILCO has misread the case of Southeastern Illinois Electric Cooperative, Inc. vs. Central Illinois Public Service Company, 89-0191, in stating that it stands for the proposition that customer preference is of importance to a decision by the Commission. (Id., p. 8) EIEC argues:

That case was determined on the basis of Section 5 rights and had no relationship at all to Section 8 rights. In that case, both Coles Moultrie and CIPS held franchises from the City of Benton and because both electric suppliers held that franchise, the Commission held they had equal rights. Therefore, the case presented a very limited factual circumstance in which customer preference would control.

(Id., p. 9) EIEC adds, "The courts simply do not allow customer preference except under those limited circumstances or under the circumstances set forth in Section 8 and as we have noted under Section 8, customer preference has and must be considered of lesser weight to the primary issue of which supplier has the lines in closer proximity to the Subdivision as a unit." (Id.)

EIEC concludes, "Therefore, CILCO's argument concerning customer preference which is based solely upon rate differential simply should be considered for what it is - one of lesser weight." (Id.)

2. First to Furnish Service in Area

Under Section 8, another factor which the Commission may consider, but with lesser weight than proximity, is which supplier was first furnishing service in the "area". The term "area" is not defined in the Act.

The Subdivision is located within a mile and half radius of St. Joseph, Illinois. (CILCO Ex. F, p. 3) Central Illinois Electric Company ("CIEC") obtained the right, power and authority to maintain and operate a system of electric lighting, heating and power supply in the Village of St. Joseph, Illinois pursuant to an ordinance passed and approved on August 21, 1911. (CILCO Group Exhibit 26) CILCO acquired the St. Joseph, Illinois territory previously owned by CIEC from Commonwealth Edison ("Edison") in 1975. (Tr. 780)

The first residence located in the southwest quarter of Section 13 was built by Busboom in 1968. (CILCO Ex. G, p. 2)

Busboom's house was located approximately 800 feet west of the subdivision. (CILCO Exhibit 21; Tr. p. 765) Edison was the initial Supplier for Busboom's residence. CILCO became the Supplier to Busboom's residence when CILCO acquired various facilities from Edison in 1975. (CILCO Ex. G, p. 2; Tr. 780) CILCO states, "As such, CILCO, through its predecessor Edison, was the first Supplier furnishing Service to a house located near the Subdivision." (CILCO Br., p. 16)

To the west of the Subdivision, Busboom previously developed four residential subdivisions containing a total of 60 residential lots. (CILCO Ex. A, p. 4) These subdivisions, known as Wiltshire Estates Subdivisions 1, 2, 3 and 4, were developed in 1973, 1975, 1976 and 1978, respectively. (Id.) To the north and northwest of the Subdivision, there are two residential subdivisions with a total of twenty lots. These two subdivisions, known as Denharts 1 and 2, were developed in 1972 and 1973, respectively. (Id.) CILCO is the supplier for these six subdivisions. (Id., pp. 4-5)

EIEC provides electric service to a subdivision located in the Northeast Quarter of Section 13, which is known as Busboom's Country Acres First Subdivision ("Country Acres"). (EIEC Ex. L, p. 2) CILCO alleges that Country Acres consists of only five lots and was developed by Busboom in 1972. (CILCO Br., p. 5, citing Tr. 776-777)

In its brief, CILCO notes that the term "area", as contained in Section 8, is not defined in the Act. CILCO concludes that whether the Commission interprets "area" broadly to include the St. Joseph, Illinois area, or narrowly to only include land near the Subdivision, CILCO, through its predecessors, was the first furnishing service in the "area". (CILCO Br., p. 15)

In its brief, EIEC claims that "EIEC was the first furnishing service in the area." (EIEC Br., p. 24) According to EIEC, the evidence indicates that EIEC and its predecessor, Illini Electric Cooperative, commenced serving in the St. Joseph area in 1919. (EIEC Br., p. 24) EIEC further states that "[w]ith respect to Section 13 itself, EIEC was first furnishing service in this area long before CILCO or any of its predecessors provided service there." (Id.) EIEC adds, "EIEC, in fact, is the only electric supplier to furnish electric service to the Southwest Quarter of Section 13 being the Quarter Section where the Subdivision is located prior to the date of the ESA." (Id.) In this portion of its brief, EIEC also alleges that it has spent over five hundred thousand dollars upgrading its electrical

system in the St. Joseph area in order to provide adequate electrical service to the existing and anticipated electrical customers. (Id.)

3. Assisting in Creating Demand for Proposed Service

Another discretionary "lesser weight" factor under Section 8 is the extent to which each supplier assisted in creating the demand for the proposed service. CILCO believes that it alone assisted in creating the demand for the proposed Service through its economic development activities and its low and stable rates.

CILCO states that to the west of the Subdivision, Busboom developed four prior subdivisions containing a total of sixty lots, that CILCO worked with Busboom to provide temporary and permanent electric facilities on a timely basis, and that Busboom never had any contact from anybody from EIEC offering to provide Service to him for any of the five Wiltshire Subdivisions. (CILCO Br., p. 16)

Regarding economic development, CILCO alleges that it has a full-time employee who is an economic development representative; that CILCO is an active and direct participant in many economic development committees in its service territory; that CILCO is an active member of the Central Illinois Corridor Council and the East Central Illinois Development Corporation which are engaged in economic development activities in the geographic area of the Subdivision; that CILCO has prepared an economic development packet for distribution to potential customers; and that CILCO presently has three economic development rates on file with the Commission. (CILCO Br., pp. 5-6)

CILCO alleges that EIEC has no economic development staff members and is not a direct member of any economic development commissions, committees or councils; that EIEC's economic development activities are through Soyland Power Cooperative ("Soyland"); that EIEC, through Soyland, has only been active in economic development corridor councils for approximately three years; and that EIEC is not aware of any direct activities engaged in by Soyland that would have resulted in Busboom platting the Subdivision in the location that he did. (CILCO Br., p. 6)

It is CILCO's belief the low and stable rates are the foremost economic development tool that a utility can employ. (CILCO Br., p. 6) CILCO states that it presently has the lowest residential electric rates of any investor-owned utility within the State of Illinois. (Id.) According to CILCO, EIEC acknowledges that service and rate availability are the best

economic development tools, and that "rates are a significant marketing tool or portion of the creation of demand." (CILCO Br., p. 7) CILCO adds, "It has been CILCO's uncontradicted testimony in this proceeding that its low and stable rates have been a contributing factor in creating a demand for residential electric service in the St. Joseph area and that the Subdivision is an extension of the creation of that residential demand." (Id., p. 17)

In its brief, EIEC argues that it has provided the greatest assistance in creating demand for the proposed service. (EIEC Br., p. 26) EIEC alleges, in part:

The evidence shows that EIEC has invested more than half a million dollars in its electric plant in this general area in order to insure adequate electricity to the people residing in Section 13 and the area surrounding St. Joseph. EIEC has been committed to this area since its inception in 1939 and remains committed at the current time. The fact that it has rebuilt its electrical distribution lines in this area as recently as 1980 and that such lines are basically new shows its financial commitment to the adequacy and reliability of electric service in the area of St. Joseph.

(Id., p. 26) EIEC also asserts that its primary emphasis has been to assist in developing the area it serves; that it belongs to Soyland Power Cooperative which is actively engaged in promoting economic development in the rural area; and that EIEC is primarily interested in seeing the rural area develop, homes constructed, industry developed and electric service improved in the rural area because that is the primary area of service for EIEC. (Id., p. 29)

In its reply brief, EIEC submits that CILCO provided service to the subdivisions in the Southwest Quarter of Section 13 simply because they were closer in proximity to the existing 1965 distribution lines of CILCO than they were to the 1965 existing lines of EIEC. (EIEC R. Br., pp. 12-13) Regarding rate differential, EIEC contends that the rates have nothing to do in determining who has provided the greater assistance in creating the demand. (Id.) According to EIEC, "Mr. Busboom did not know who the electric supplier was going to be or that there would even be a dispute as to the electric supplier until the plat of the subdivision was recorded. (Tr. 242-243)." (Id., p. 14)

4. Amount of Additional Investment

Under Section 8, another factor which the Commission may consider, but with lesser weight than proximity, is which supplier can furnish the proposed service with the smaller amount of additional investment.

On this issue, EIEC claims it is the supplier which can furnish the proposed service with a smaller amount of additional investment. (EIEC Br., p. 28) According to EIEC, its testimony shows that it would cost EIEC \$13,262.00 to provide service to the subdivision; that it would cost CILCO \$16,747.11 to provide electric service to the subdivision in question; that both electric suppliers have adequate facilities in existence for serving the subdivision; and that both of the electric supplier's 1963 existing lines are adequate for providing such service. (Id., p. 28)

In its brief, CILCO states the EIEC proposes to use a direct buried cable to serve the Subdivision, while CILCO will use premium cable with EPR insulation and flexible conduit to serve the Subdivision. (CILCO Br., p. 7) CILCO alleges that the cost difference between CILCO and EIEC for distribution and service cable more than represents the total difference in the cost of service between CILCO and EIEC, and that the direct buried cable that EIEC proposes to use has been owned by EIEC for fifteen years. (Id., pp. 8-9) CILCO also asserts that EIEC does not install much underground cable, and has little or no experience or familiarity with cable in conduit, while CILCO has over 7 million feet of underground cable in service. (Id.)

CILCO further alleges that it completed a detailed distribution cable economic evaluation in 1988 and concluded that the use of higher quality, higher initial expense cable will result in a lower cost, better service, installation for the life of a subdivision; whereas, EIEC has never done such an economic evaluation of cable costs. (Id.) CILCO maintains that the cost of providing the proposed Service to the Subdivision will over time prove to be the least cost, best service system, and that accordingly, CILCO can furnish the proposed Service to the Subdivision with the smaller amount of additional investment. (Id.)

In its reply brief, EIEC asserts that there is no evidence in the record for CILCO to conclude that EIEC does not have adequate experience in the use of underground cable. (EIEC R. Br., p. 17) According to EIEC, it will use 220 mill cable, which it has used for over 20 years with only one failure. (Id., pp. 17-18; Tr. 179-181) EIEC adds, "CILCO's engineer admitted on

cross examination that CILCO's criticism of the type of underground cable proposed to be used by EIEC was based upon CILCO's experiences in using the 175 mill cable rather than the 220 mill cable. (Tr. 383-384)" (EIEC R. Br., p. 18) EIEC also asserts no studies were presented to support CILCO's claim that CILCO's proposed installation would have the least costs and best service over a period of time. (Id., p. 19)

EIEC also contends that Section 8 speaks in terms of "additional investment". EIEC argues on page 19 of its reply brief:

This strictly means the investment needed to extend the lines of the electric supplier to the proposed service. The Commission is not authorized to delve into the costs of replacement of this proposed additional service, the amount of failures that will occur and the cost of the repair of those failures.

B. Other Issues: Rate Differential; Public Interest

Under a separate heading in the Argument portion of its brief, CILCO addresses "Rate Differentials." (CILCO Br., pp. 21-23) EIEC responds to CILCO's arguments on pages 20-23 of EIEC's reply brief. Certain of these arguments are summarized above in discussions of customer preference and creation of demand for the proposed service.

Under a separate heading in the Argument portion of its brief, CILCO also addresses the "Public Interest." According to CILCO, Section 8 of the Act requires that the Commission act in the public interest. In CILCO's view, the public that will primarily be effected by the decision in this proceeding are Busboom and the purchasers of the ten lots which comprise the Subdivision, and the owners of lots in the Subdivision will suffer greater harm than the ratepayers of EIEC if CILCO is allowed to serve the Subdivision. Accordingly, CILCO believes the Commission should find that it is in the public interest to allow CILCO to provide service to the Subdivision. (CILCO Br., pp. 23-25)

EIEC responds to CILCO arguments on pages 23-25 of EIEC's reply brief. EIEC submits that the public interest, if it is to be taken into account at all by the Commission, must encompass a larger group than just Mr. Busboom or the purchasers of the lots. (EIEC R. Br., pp. 23-24) EIEC adds on page 24:

If the Commission is to consider the public interest, the Commission must consider not only the public interest as it

affects Mr. Busboom which is of a limited duration, but it must also consider the public interest as it affects the long term availability of electric service to the rural area of Illinois. This electrical service responsibility falls to EIEC in the "area" surrounding the town of St. Joseph.

C. Conclusions

Section 8 provides that in addition to giving "substantial weight" to the proximity issue, the Commission "may" consider, but with "lesser weight", certain other factors. The first of these is customer preference. The parties agree that the customer preference is for service from CILCO. The parties disagree over the weight that should be assigned to this preference or to the "magnitude" thereof.

The second "lesser weight" factor which the Commission "may" consider is which supplier was first furnishing service in the area. The positions of the parties relating to this factor are summarized above. CILCO and EIEC are in disagreement over which company was the first to furnish service in the area.

As the parties have observed, the Act does not define the term "area". In this proceeding, the parties' conclusions as to which supplier was first to serve the "area" depend in large part, on which geographic boundaries are used and the point in time at which this determination is made. CILCO believes that whether the Commission interprets the area broadly to include the St. Joseph area or narrowly to only include land near the Subdivision, CILCO was the first to furnish service. (CILCO Br., p. 15) EIEC, on the other hand, contends that EIEC was first to furnish the service in Section 13, was first to furnish service in the general area surrounding Section 13, and was first to furnish service in the overall larger area that encompasses Champaign County and surrounds the town of St. Joseph. (EIEC Br., p. 26)

Based on the provisions of Section 8 and the facts presented in this proceeding, the Commission is of the opinion that the record simply does not conclusively show which supplier was the first to furnish service to the "area". Accordingly, this discretionary, lesser weight factor is not useful to, and should not be taken into consideration by, the Commission in determining which supplier is entitled to serve the premises in question.

The third lesser weight factor which the Commission may consider under Section 8 is the extent to which each supplier assisted in creating the demand for the proposed service. The

parties are in disagreement on this issue, and their arguments are summarized above.

The Subdivision at issue is the Wiltshire Estates Fifth Subdivision. CILCO points out that it is the supplier which has already extended service to several other neighboring subdivisions, including the first four Wiltshire Estates subdivisions also developed by Busboom. EIEC responds, however, that for the most part, CILCO extended service to these subdivisions simply because the subdivisions were closer to CILCO's "existing lines" as of July 2, 1965.

Based on the evidence presented, it appears that both suppliers have invested significant capital resources for purposes of ensuring the availability of adequate electric service in portions of Section 13 and the area surrounding St. Joseph. Although both companies are involved in various types of programs designed to promote economic development in these areas, it appears that CILCO has been the more active company in this regard. Having reviewed the record, the Commission concludes that while both suppliers have assisted in creating the demand for the proposed service, CILCO has provided somewhat greater assistance in this respect.

The fourth discretionary lesser weight factor is which supplier can furnish the proposed service with the "smaller amount of additional investment." The parties reach opposite conclusions on this issue. Their arguments are summarized above.

Cost estimates for furnishing electric service to the proposed subdivision are \$13,262 for EIEC versus \$16,747 for CILCO. CILCO attributes this difference entirely to CILCO's use of higher quality cable in conduit. According to CILCO, the Company's cable economic evaluation performed in 1988 indicates that use of the higher quality cable in conduit will over time prove to be the less costly alternative.

The Commission has reviewed the positions of the parties on the issue of which supplier can furnish the proposed service with the smaller amount of additional investment. Whether this factor is considered in making the ultimate determinations in this docket is discretionary with the Commission.

As indicated above, the cost estimates are approximately \$3,500 apart, and CILCO has explained why it believes its use of premium cable in conduit is less costly over the long term. Under the circumstances, the Commission does not believe that consideration of additional investment differential would be

useful in this docket in deciding which supplier is entitled to serve the Subdivision.

As noted above, CILCO, under a separate heading in the Argument portion of its brief, addresses "Rate Differentials." Certain of these arguments are summarized above in discussions of customer preference and creation of demand for the proposed service. EIEC opposes any consideration of rate differential in this docket. As EIEC has observed, Section 8 does not list rate differential as a separate factor which shall be or may be considered by the Commission. In this proceeding, CILCO has been allowed to present evidence on rate differential insofar as that issue purportedly relates to the bases for positions on customer preference and on the assistance in creating demand for the proposed service, which are factors identified in Section 8. The Commission finds, however, that any consideration of rate differential is limited to those factors, and that rate differential is not a factor entitled to separate consideration in this docket.

VII. CONCLUSIONS

The Commission has considered the positions of the parties, applicable statutory provisions and caselaw, and the findings made above. While noting that the positions of both parties are well articulated in their evidence and briefs, the Commission hereby concludes that EIEC is entitled to serve the premises in question.

The instant proceeding is brought before the Commission under Section 8 of the Electric Supplier Act. Section 8 mandates that the Commission "shall" give "substantial weight" to the consideration of proximity. Other factors identified in Section 8 "may" be considered but are entitled to "lesser weight". In this docket, the Commission has found that EIEC's existing lines are in considerably closer proximity to the Subdivision, which comprises the premises proposed to be served.

With regard to the discretionary, lesser weight factors, the Commission has found that customer preference, based primarily on rate differential, rests with CILCO. Also, CILCO appears to have provided somewhat greater assistance in creating the demand for the proposed service. In reaching its decision in this docket, the Commission has given consideration to these lesser weight factors, including the reasons therefor and/or extent thereof.

Based on the record, however, the Commission does not believe that the weight to be given these two factors is sufficient to overcome the "substantial" weight which the

Commission is required by statute to give to the question of proximity, particularly when considering that the Subdivision on the whole is appreciably closer to the existing lines of EIEC.

Although the Commission is sympathetic to the concerns of the customer whose preference is for service from the same supplier that provides electricity to the first four Wiltshire Estates Subdivisions, the Commission is obligated to apply the provisions of Section 8 of the Act. The Commission agrees with EIEC that under the facts presented in this docket, the standards as enunciated in Section 8 and interpreted in the caselaw support a determination that EIEC is entitled to serve the Subdivision.

In its briefs, and in its exceptions to the proposed order, CILCO also argues that allowing CILCO to provide service to the Subdivision would be in the "public interest" within the meaning of Section 8. As noted by EIEC, however, the "public interest" arguments advanced by CILCO appear to focus primarily on the testimony of Mr. Busboom, and purchasers of lots in the Subdivision, who prefer service from CILCO due principally to rate differential. This testimony has been given consideration by the Commission; however, it is entitled to no greater weight in the context of public interest than it is under the customer preference factor, which by statute is a discretionary factor entitled to lesser weight than proximity. In the opinion of the Commission, a determination that EIEC should be permitted to provide the proposed service is in the public interest.

Accordingly, the Commission finds that EIEC is entitled to be the exclusive provider of electric service to the current and future residents of the Subdivision; that CILCO should be directed to discontinue furnishing electric service to the Subdivision; and that CILCO and EIEC should be directed to cooperate in providing and/or removing facilities which currently allow CILCO to provide electric service to the Subdivision and shall do so in a manner which will reasonably enable the residents of the Subdivision to have a continuous supply of electric service.

VIII. FINDINGS AND ORDERING PARAGRAPHS

The Commission, having considered the record presented in this proceeding, is of the opinion and finds that:

- (1) CILCO is a public utility as defined in The Public Utilities Act;
- (2) EIEC is an electric cooperative as defined in Section 3.4 of the Electric Supplier Act;

- (3) CILCO and EIEC are electric suppliers as defined by Section 3.5 of the Electric Supplier Act;
- (4) the Commission has jurisdiction of the parties and subject matter hereof;
- (5) the facts recited and conclusions reached in the prefatory portion of this Order are supported by the record herein and are hereby adopted as findings of fact;
- (6) EIEC has the exclusive right to provide electric service to the Subdivision.

IT IS THEREFORE ORDERED that EIEC has the exclusive right to provide electric service to the current and future residents of the Subdivision; that CILCO shall discontinue furnishing electric service to the Subdivision; and that CILCO and EIEC shall cooperate in providing and/or removing facilities which currently allow CILCO to provide electric service to the Subdivision and shall do so in a manner which will reasonably enable the residents of the subdivision to have a continuous supply of electric service.

IT IS FURTHER ORDERED that any objections or motions made during the course of these proceedings that remain undisposed of are hereby disposed of in a manner consistent with the ultimate conclusions contained herein.

IT IS FURTHER ORDERED that this Order is final; it is subject to the Administrative Review Law.

By order of the Commission this 18th day of August, 1993.

(SIGNED) ELLEN C. CRAIG
Chairman

(S E A L)

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Eastern Illini Electric
Cooperative

-vs-

Central Illinois Light Company

Complaint under the Electric
Supplier Act regarding service
in Champaign County, Illinois.

89-0259

ORDER

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